Supreme Court, U.S.
FILED

10-503 JUN 21 2010

OFFICE OF THE CLERK

The

Supreme Court of the United States

John E. Erickson and Shelley A. Erickson
Petitioners,

V.

City of Auburn, Washington
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1.

Did the Federal court have jurisdiction over the Plaintiff's case?

2.

Did the defendant's default on three statutes that would not allow them to remove plaintiffs case period, or even put a case together?

3.

Have defendant's, plaintiff's counsel, and officers of the court violated RCW 9.91.010 , restricting the plaintiff's liberties based on fraud, by violating 18 U.S.C. § 1964; 18 U.S.C. §1503; RCW 4.96.010, "Fraud up the court"; 18 U.S.C. § 1964; 18 U.S.C. §1503; (RICO ACT); (UDAP), "MAIL FAUD ACT" &"WIRE FRAUD ACT"? "TORT" LAW ACT RCW 4.96.020(1-4)?

4.

Should have plaintiff's counsel allowed the case to be removed from Superior Court of Washington, for King County without argument?

5.

Would the judge have allowed the plaintiff's case to be removed to Federal court without plaintiff' attorneys' amendment?

6.

RE: Notice of Removal (from King County Superior Court cause #06 -2-40691-5). Did

defendant omit documents served upon them and required to be listed pursuant to 28 U.S.C. § 1446(a-b) and 1447?.

7.

Did the plaintiffs' attorney obviously show a pattern of consistent egregious conduct, paving the way for the defendants attorney, sabotaging plaintiff's case in support of the defendants by removing plaintiffs individuals from their case adding [s]state and adding federal statutes, when Washington RCW laws protected their rights setting the Erickson's up for removal of their case to Federal court, that had been denied removal before he amended their case, thus allowing the plaintiffs case to be thrown out due to the statutes of limitations the federal courts of rules go by that are different from the Washington State court of rules?

8.

Is the U.S. Supreme Court the only court with the authority to review and invoke and remand plaintiff's case back to State Court, j or grant plaintiff's case due to extra ordinary reasons.?

RULES14,1 (b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of the prepetition is as follows:

Plaintiffs/Appellants and Petitioners: John Earl Erickson Shelley A. Erickson/During Period of ownership of Person Lane LLC.

Defendants-Appellees and/ Respondants: City of Auburn, Paul Krauss and Charles Joiner, Roger Thordeson, Rich Wagner ,Lynn Norman, Gene Cerino, Nancy Backus, Sue Singer , Pete Lewis , Bill Peloza,
Officers of the Court: Dan Heid, Mike Reynolds, Justin Park, Martha J. Pechman, Molly C. Dwyer, Michael J. Heavy. Randal Ebberson*

RULE 14.1(i)&(iii) 20,1 AND 33.1(a)&31(b)(g)&(i)

The above rules have been respectfully followed.

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"The people of the United States, by their Constitution, have affirmed a division of internal governmental powers between the federal government and the governments of the several states-committing to the first its powers by express grant and necessary implication; to the latter, or [301 U.S. 548, 611] to the people, by reservation, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States.' 4

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[t]he powers delegated by the proposed Constitution to the Federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293(C. Rossiter ed. 1961). U.S. Constitution Art.. I, 8."

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PETITION FOR WRIT OF CERTIORARI

"In Re: John E. Erickson and Shelley A. Erickson Plaintiffs" below and Petitioners, respectfully petitions in so far as applicable for writ of certiorari to review the opinion and judgment of the U.S. Court of Appeals for the Ninth Circuit

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OPINIONS BELOW

A. October 24, 2008, Order granting defendant's motion for summary judgment. Each of the Erickson's claims is barred by the applicable statutes of limitation, the claims are dismissed and the City's motion for summary judgment is GRANTED. This action is hereby DISMISSED with prejudice.

October 27, 2008, court filed judgment in a civil case. Judgment ordered Defendant is granted and Plaintiff's claims are dismissed

B. January 5, 2010, Memorandum issued. GOODWIN , WALLACE, and CLIFFTON, circuit Judges. John Erickson and Shelley A. Erickson appeal pro se from the district courts summary judgment in their 42 U.S. C. §1983 action alleging various claims. This disposition is not appropriate for 2publication and is not precedent except as provided by 9 th Cir R.. 36-3. The panel unanimously concludes this case is

suitable for decision without oral argument. See Fed. R. App. P. 34(a))(2).

C. Disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3., Case is suitable for decision without oral argument.

D. March 24, 2010, Order from the Court denying Rehearing. The petition for panel rehearing is denied. No further filings will be accepted in this closed case.

E. April 1, 2010, Mandate issued: The judgment of this Court, entered January 05, 2010, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41 (a) of the Federal Rules Appellate procedure.

JURISDICTION

The Judgment of the United State Court of Appeals for the Ninth Circuit was entered on March 24, 2010 U.S. Court of Appeals. This timely petition for a writ of certiorari was subsequently filed on or before July 06, 2010. The Jurisdiction of the court is invoked under 28 U.S.C. § 1254(1) to remand plaintiff's case to the Superior Court of Washington at Norm Maleng Regional Justice Center For King County, demanding jury trial with oral argument, with a Constitutional Judge.

Petitioners claims have been denied by Order of The U.S. Court of Appeals for the Ninth

Circuit based on "Fraud upon the Court", and perjury, and consistent egregious conduct of petitioners incompetent attorney, therefore there are the[M]ost [E]xceptional circumstances that warrant the exercise of the Court's discretionary powers, that adequate relief cannot be obtained in any other form or from any other court. This case was originally filed in Superior Court of Washington State For King County; to hereby motion for writ of certiorari to remand this case from Federal court to the Superior Court of Washington State For King County, with oral argument and jury trial, unless case is granted to plaintiff's by the Supreme Court of the United States judges.

This case was originally filed in Superior Court of Washington State For King County. The case was removed to Federal court upon motion of Defendant and without cause and based upon fraud. Jurisdiction is not properly laid in Federal court. Oral argument is required, this case is complex and too much information can be easily misinterpreted. Therefore there are the[M]ost [E]xceptional circumstances that warrant the exercise of the Court's discretionary powers, that adequate relief cannot be obtained in any other form or from any other court.

CONSTITUTIONAL PROVISIONS INVOLVED

Art. III. This Constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in and on branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from the either front." U.S. v. Lopez, U.S. 549 (1995)

"The people of the United States, by their Constitution, have affirmed a division of internal governmental powers between the federal government and the governments of the several states-committing to the first its powers by express grant and necessary implication; to the latter, or [301 U.S. 548, 611] to the people, by reservation, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States.'

The Constitution thus affirms the complete supremacy and independence of the states within the field of its powers. Carter v. Carter Coal Co., 298 U.S. 238, 295, 56 S. Ct. 855, 865.

I. Article III, Section 2 of the U.S. Constitution gives the Supreme Court original jurisdiction to function as a trial court: The judicial

Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public ministers and Consuls;--

--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State , or the Citizens thereof , and foreign States, Citizens or Subjects.

II. Art. IV of the Constitution State v. Federal separation provides the State had complete sovereignty internal to their border over everything except taxes on foreign commerce, mail fraud, and counterfeiting. The Federal government had jurisdiction over all external or foreign matters only. The Federal Court does not have jurisdiction over the Petitioners case. U.S. Constitution Art. I, 8."

[t]he powers delegated by the proposed Constitution to the Federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293(C. Rossiter ed. 1961). U.S. Constitution Art.. I, 8.",

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STATEMENT OF THE CASE

"In re: John Earl Erickson and Shelley Ann Erickson Petitioner's "respectfully petition insofar as applicable, the form of a petition for The Writ of Certiorari proscribed by and under the authority of 28 U.S.C. § 2254(b); & 28U.S.C§ 2225, the 2nd Cir; to the United States Court of Appeals for the Ninth Circuit and under the authorization of 28 U.S.C. §1651(a) do hereby petition to invoke and remand this case from Federal court to the Superior Court of Washington State For King Respondents requested the removal of the Petitioners case knowing the case was filed in the proper jurisdiction as Pro Se, within the State of Washington's internal borders, based on fraud upon the court.

January 26, 2007, Respondents requested the removal of the Petitioners case filed Pro Se, and were [denied]. January 2007, Plaintiffs newly hire counsel, that filed his very first documents by amending our case obviously in support of the defendants removing the individuals the plaintiffs had listed on their case, then adding "s" to state then added federal statute laws to a state case protected under state law as the plaintiffs had filed it, then sat back without argument on the plaintiffs behalf, all without permission by the plaintiffs and blatantly in supported the defendants second request for removal of plaintiffs case to Federal court changing the statutes of limitations, that the plaintiffs had filed by, following the Rules of the State of Washington.

Justin Park had told Mrs. Erickson she has filed her case to the very date he could see would be the argument of the statute of limitations that I had an unbeatable case, that Mrs. Erickson had done all the hard work, he just had to wrap up the case and get the money this city owed us. Justin Park claimed it would take about six months. April 10, 2007, the newly hired attorney (hired as of January 2007) amended the plaintiff's case without the plaintiffs permission and without our knowledge the federal court starts the statutes the day the case is filed. Justin Park did tell Mrs. Erickson our case was an unbeatable case that he was not afraid of winning the case in any court.

May 2007, after the case was removed by Justin Park's amendment sabotaging and absolutely voiding plaintiff's claims to our blinded detriment, the plaintiff's lawyer changed his claims and told Mrs. Erickson there might be issues with the statute of limitation, however does not explain why.

April 2010, a customer of the plaintiffs is a prosecuting attorney and asked to review our case, when I told Lauren Brown, [attorney] we had lost our case due to an incompetent attorney. I found I did not know the entirety of just how egregious our attorney had been. She asked to review our case then called Mrs. Erickson and said "Oh my God " you need to turn your attorney into the bar, and disbar him, then Lauren told plaintiff's our case

was not over to file the Writ of Certiorari and how to file. She explained all the above and just how our attorney supported the defendants and not us and why we lost our case, (with Justin Parks first document he drew up , an amendment to our complaint,) explaining the machinery of the court and the federal courts begin the statute of limitations when the case is filed and do not go by the tolling of the statutes per the Washington laws, that our attorney should have filed the default and argued the default for us no matter what, and should have argued the jurisdiction, however instead set us up for removal without argument. For the first time plaintiffs saw the sabotage.

I based my entire appeal on the tolling of the statutes, not comprehending the federal court would not abide by the laws I abided by as Pro Se per the State of Washington Rules. We did not understand how Justin could agree with the court in his October 29, 2008 e-mail. After my case is denied, I receive an e-mail from Justin claiming he had discussed the December 29, 2006 date being the real date. This is a flat out lie. He tells me I can only use the evidence he used in the court for my appeal, there is no way to add witnesses or evidence. Exhibit 70 -73. He knew he had sabotaged our case.

The first day I (Mrs. Erickson) met with Justin Park, I immediately ask him to file for the default. Plaintiff's counsel is aware the defendants [DEFAULTED] on the Washington State Tort

statute RCW 4.96.020(-4) & RCW 4.96.010; for both served summons and complaints and therefore the statute 28 U.S.C. §1446 (a-b) &1447, and knew the city had no authority to put a case together nor to request motion for removal. Justin Park refuses to file the default stating the city will get around it that it would be a waste of his time.

The petitioners right to petition all writs necessary are protected by 18 U.S.C. §1964, WHICH PROVIDES FOR CIVIL REMEDIES FOR Racketeer influenced and Corrupt Organizations (RICO) violations; And 18 U.S.C. §1503, which prohibits the obstruction of justice.

DEFENDANTS ARE GRANTED REMOVAL ENTIRELY DUE TO PLAINTIFF'S COUNSEL'S AMENDMENT, SABATOGING PETITIONERS CASE.

May 3, 2007, the defendants file for removal: This matter is subject to removal because the Plaintiffs [plaintiff's attorney] have alleged in their Amended Complaint date April 4, 2007 and served on the City on April 9, 2007, a copy of which is attached hereto and marked as Exhibit A, That Defendants have violated Plaintiffs' rights secured by the laws of the United States. To wit, at page 6 of the Amended Complaint paragraphs 42-50,

Plaintiff alleges violations of due process in violation of 42 U.S.C. §1983. And Obstruction to justice , ad 18 U.S.C. § 1503. See South Star Fundry LLC v. Supreme Sprouse, 2007 WL 812174 (W.D.N.C. Mar. 13, 2007)(18 U.S. C. § 1964; United states v. Dementz, 2007 WL 708975 (11TH Cir. Jan, 2 2007).

Exhibit22: Order page 3 ¶7 –page 4¶1&2 : Procedural history: Proceeding pro se, the Erickson's filed their original complaint against multiple defendants in King County Superior Court on December 29, 2006. Defendants remove the matter to this Court on January 26, 2007. (See Case No. C07-126MJP at Dkt. No. s.) On March 9, 2007, the Court remanded the case after finding that it lacked subject matter jurisdiction. (Id. At Dkt. No. 6.) The Erickson's obtained counsel [THEN COUNSEL AMENDS PLAINTIFF'S CASE TO VOID THEIR CASE], and then filed an amended complaint in state court on April 4, 2007, [without plaintiffs permission], naming the City of Auburn as the only defendant [BY DESIGN OF AN EGREGIOUS CORRUPT ATTORNEY], (Dkt. No. 1-2.) On May 3, 2007, the City again removed the case to this Court. (Dkt. No.1.)

The City filed its amended answer on May 10, 2007 and asserted as an affirmative defense

that some or all tof the claims were barred by the applicable statute of limitations. (Dkt. No 5.at 15.) The amended complaint contains both federal and state claims against the city. [PLAINTIFFS ATTORNEY ADDED FEDERAL STATUTES BY DESIGN TO VOID HIS OWN CLIENTS CASE.]

The Erickson's allege that the City's actions during the development process: (1) constitute a violation of the Erickson's procedural due process and equal protection rights; [protected by RCW state laws, there was no need for federal statutes.]; (2) effected a taking of the Erickson's property; (3) interfered with a contractual expectancy; and (4) support claims for negligence and misrepresentation. (Dkt. No. 1-2.) The City's motion for summary judgment contends that each of these claims is barred by the applicable statute of limitations.

Exhibit 22 pg 4 ¶5 line 23 The Erickson's [Erickson's newly hired attorney, not the Erickson's] bring federal claims pursuant to 42 U.S.C. § 1983. The Statute of limitations for federal civil rights claims is three years. The Erickson's did not understand the three years did not go by the tolling of the statutes. This is not clear and Justin knew this. We did not discover what our attorney had done to us until Lauren

pointed it out. Our attorney did all this by design to support the defendants.

The Petitioners discover the majority of Federal judges do not swear on the Constitution. Furthermore the petitioners have discovered the Federal court boundaries are outside the sovereign boundaries of the State. The Petitioner has discovered each individual state has its own internal boundaries that are sovereign and the case was filed in the proper jurisdiction. Exhibit 17 &18 ¶1¶2.

MAIL FRAUD AND WIRE FRAUD

This judge granted the defendant's case that was defaulted and denied the plaintiffs case based on fraud that was within the statutes of limitations, based on "FRAUD UPON THE COURT" and violation of the (RICO ACT) and "Mail Fraud "and "Wire Fraud" statutes.33 &34; 18U.S.C.§1341; 18 U.S.C. §1343: 18 U.S.C. §1964; State laws creating private rights actions for unfair and deception Deceptive acts and practices (UDAP). 8U.S.C. §1503; Ad unfair deceptive acts, practice ninor affecting commerce. "36 ; See 33 18 U.S.C. § 1961(1)(B); 34 18 U.S.C. §1962; 35 18 U.S.C. § 1964(c). Obstruction to Private Entrepreneurs; 44. Ld. At 997-98, 45; John H. Beslner e al. Class action "Corps Publick Servants or Private Entrepreneurs? 57 STAN L. Rev 1441. (2005.) Exhibit 22, pg3¶7pg 4 ¶1&2

The Petitioner's are nationals presiding in the sovereign State of Washington; having discovered the Federal court that tried petitioner's case was the wrong jurisdiction and should never have tried the case. The State of Washington is a sovereign State with internal powers.

Plaintiff's counsel blatantly set up the Erickson's case[WITH AN AMENDMENT BY DESIGN in support of the defendants]to be removed from Superior Court of Washington, for King County without argument.

Defendants are granted on their second try to remove plaintiffs case. Defendants know they have defaulted on two summons and complaints and Rule 1446 (a-b)&1447, and claim pursuant to Rules [defendants defaulted on these statutes as well] to: 28 U.S.C. §1331, §1367(a), §1443, § and/or §1446(a-b) and or §1447? Committing "Fraud upon the court".

FEDERAL COURT LACKED Jurisdiction over plaintiff's case period and based on fraud.

The Court of Appeals ruled that petitioners had not tendered a substantial constitutional claim and ordered dismissal of the entire action for want of subject matter jurisdiction. The principle applied

by the Court of Appeals – that a "substantial " question was necessary to support jurisdiction – was unexceptionable under prior cases.

The duty of the United States in a tort action is defined in accordance with the law of the state where the negligence occurred. Richards v. United States, 369 U.S.1 (1962). The Plaintiff's filed a Tort Case; exhibits 11 and 27 (Tort action occurred inside the State of Washington; Washington State law protects my civil rights ; RCW 9.91.010 is a Washington State. My liberties have been restricted by the judges, by both removing my case and making judgment based on fraud.

Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are "so attenuated and unsubstantial as to be absolutely devoid of merit, " Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579 (1904) jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. Bradbury v. Dennis, 310 F.2d 73 (10th Cir. 1962.) cert. denied. , 372, U.S. 928, 83 S. Ct. 874, 9 L. Ed. 2d 733 (1963).

Since the courts of the United States are courts of limited jurisdiction, there is a presumption against its existence. City of Lawton Okla. V. Chapman, 257 F...2d 601 (10th Cur, 1958).

United State v. Dunningan, 507 UlS. 87, 94(1993). The foundation of our republican form of government is the notion of "separation of powers". In the legal field, this is called "the separation of powers doctrine". The U.S. Supreme Court confirmed the purpose of the separation of powers doctrine in the case of U.S. v. Lopez, 514 U.S. 549 (1995):

The petitioner's case was tried in the wrong jurisdiction outside the boundaries of their sovereign state.

The federal government has no more authority to invade that field than the state has to invade the exclusive field of national governmental powers; for, in the oft-repeated words of this court in Texas v. White, 7 Wall. 700, 725, 'the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government.

'The necessity of preserving each from every form of illegitimate intrusion judicial power is properly invoked, to view with a careful and discriminating eye any legislation challenged as constituting such an intrusion or interference. See South Carolina v. United States, 199 U.S. 437, 448, 26 Ct. 110, 4 Ann. Cas. 737." [Steward machine Co. v. Davis, 301 U.S.548 (1937)]

Federal Court Judge Never Should Have Accepted the Request to Remove The Plaintiffs Case.

Federal law requires the automatic disqualification of a Federal judge under certain circumstances. Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality.

Liljeberg v. Health services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988).

It appears to the Plaintiff's that filed their case in the jurisdiction of the State of Washington courts as a tort case under RCW TORT laws, that the judge responsible for removing our case was partial to the defendant's, since the plaintiff's filed Pro Se their Tort case in the jurisdiction of their choice and within the boundaries of their sovereign state. Mary Hutchison's signed served summons and complaint for plaintiffs was mailed certified mail January 3, 2007, along with Rachelle Erickson's signed served papers, both bearing docket number 06-240691-5KNT on the documents mailed to the Superior Court of Washington, for King county, without self addressed stamped envelope for return stamped proof. The plaintiffs not knowing we should do that, trusting it is filed in court.

The duty of the United States in a tort action is defined in accordance with the law of the state where the negligence occurred. Richards v. United

States, 369 U.S.1 (1962). (Negligence occurred in Oklahoma, aircraft crashed in Missouri).

The Plaintiff's attorneys consistent egregious conduct appears to know this following law supporting defendant's , and not his clients: Neither federal statutes nor the Constitution create a cause of action under the FTCA. Thus, plaintiffs attempting to assert constitutionally based claims do not point to an action able to be 19duly recognized under the law of the state where the act or omission occurred. Jaffee v. United States, 592 F.2d712 (3d Cir), denied, 441 U.S. 961 (1979; Lombard v. United States, 690) F. 2d 2165 (D.C. Dir. 1982). Cert., denied, 462 U.S. 1118 (1983); Clemente v. United States, 766 F.2d 1358, 1363 (9th Cir. 1985); Pereira v. United States Postal Service, 964 F.2d 873, 876 (9th Cir. 1992).

[T]he defendant's are in default for failure to answer two Summons and Complaint personally served by server upon the city at 10am Monday the 9th day of October 2006, and certified mailed October 21, 2006. Note there is no answer to both the summons and complaints on record. Therefore guilty of "mail fraud" and" wire fraud". There is proof of service.

See United States v. Hitchens: Hitchens tried to claim she was not guilty of mail and wire fraud because they did not have proof of who did it personally. "Who placed the documents in the mail" (her argument was rejected for this reason) per

judicial proceedings interpreted, the mail and wire fraud statutes has established that law enforcement need not show that person committing the fraud themselves placed the documents in the mail, or called on the phone (wire), law enforcement need only show that a person commits an act with knowledge that use of the mails or wires would follow in the ordinary course of business. Furthermore, evidence of business custom is sufficient to establish knowledge that this use of mail ore wires would follow. 21 . Exhibit17&18; 58.

This statement is fraud upon the court. The city knows they were served on both dates and there is one of the dates stated on the cause of action and complaint the first served summons and complaint was left off by accident. These officers of the court have committed a terrible crime and need to be punished. Exhibit 11 Pg 2, LINE 3-11; 15 &58.

The altered documents the defendants claim plaintiffs altered are their exhibits with their exhibit numbers on them, not ours , the exhibits I entered in the Appeals court were out of exhibits used during my case, some from the original exhibits Exhibit 15. They are our exhibits that are clearly altered smeared and smudged and cut off by defendants. "RICO ACT" LAWS HAVE BEEN VIOLATED HERE, so severely it is disgusting. The permit applications could only be altered internally inside city hall. The plaintiffs had

no access to records inside internal city hall. Exhibit36-44 & 55 ¶2 Jim Tinner only caught one of the many altercations that could only be done inside city hall.

Unless my briefs (EXHIBIT 11, pg2, line5-11; 15 PG1 EXHIBIT 1 OF DECEMBER 29, 2006 FILED COMPLAINT AND CAUSE OF ACTION, were thrown out along with my case with Justin Parks amended complaint all documents I sent to the Appeals court were already part of my case. The only new evidence I have is Jim Tinner's e-mail above, and evidence from witnesses that Justin Park did not take testimonies

Exhibit 62-64. My counsel deposition defendants witnesses and ZERO of my witnesses. Plaintiffs try to ask for issuance of subpoenas in the Appeals court and are denied. Justin Park tells Mrs. Erickson one witness has changed his mind and has nothing to say. This witness Sean Martin tells me in October 2008, he did not tell my attorney he had changed his mind, and could not understand why he was not subpoenaed. Justin refused to take Jim Tinner's testimony telling Mrs. Erickson the city will never allow him to testify.

PETITIONER'S CASE BASED ON TOLLING OF STATUTES

Plaintiff's case is actually tolled by fraud statutes and policy-making statutes and is tolled by date of May 14, 2004, when plaintiffs discovered

city had defrauded them with false policy-making[law.]

Sixty day elapse requirement was good for both the personally served documents and the certified mailed documents so the city could not claim it was not served for any reason. Exhibits: 1-9. 11, pg 2 line 5-11; 15page1 #1 exhibits for December 29, 2006 brief.

Plaintiff's Attorney And The Defendant's Attorney Commit "Fraud Upon The Courts!"

1. The Defendant's did not answer the summons and demand to pay and so far have successfully hidden this from the court.

2. The Defendant's moved to remove our case outside its jurisdiction of the State of Washington to Federal Court without substantial reason, and having defaulted on three statutes, committing "fraud upon the court."

i. Signed the document of removal notice swearing an oath.

ii. Submitted declarations of perjury by defendants.

iii. Then mailed and wired the above documents of perjury and fraud upon the court.

iv. Have lied the certified mailed summons and complaint was just a letter. The courts rely on certified

mail to be a formal serve. Exhibit 17 &18.

v. Put a case together and file notice of removal based on fraud.

"Comes now Defendant City of Auburn, by and [through their attorneys of record], and pursuant to 28 U.S.C. § 1331, §1443, §1446 and /or§1447, hereby request this matter be removed to Federal Court.

Also in Defendants Notice of Removal dated May 03, 2007 " Pursuant to 28 U.S.C. § 1446(a-b), 1447, true and correct copies of all pleadings previously served on Defendants, and all pleadings and orders regarding the prior removal action are attached hereto as follows. Exhibit 17-18.

1. The city attorneys did not list all the documents they were served. They swore under oath they submitted all documents served to them. Exhibit 1-9. 11 page 2, line 5-11, 15 exhibit 1.
   a. Did not submit serving of October 9, 2006 summons, complaint.
   b. Did not submit serving of summons and complaint October 21, 2006.
   c. Did not submit serving of October 27, 2006.
   d. Dated May 3, 2007 and signed by Randal W. Eberson and Dan

Heid attorney for defendant city of Auburn.

Defendants commit corruption of the machinery of the Court therefore "fraud upon the court", and perjury therefore commits "mail fraud "and "wire fraud" and violate the

RICO ACT.

The defendants only acknowledge the "summons and complaint with exhibits, dated December 29, 2006. [See exhibits11 pg 2 line 5-11; 15, pg 1 is exhibit #1 of December 29, 2006 exhibits,].

NOTE: What the city really received was the complaint and cause of action with exhibits, dated December 29, 2006. Exhibit 11, pg 2 line 5-11. &15 exhibit #1 of 15. These exhibits include the second served signed date of the entire council and Dan Heid. Plaintiffs eighty year old father forgot to type the first served Oct 9, 2006 on to this document, in his haste to type for Mrs. Erickson who had no computer experience at the time. Justin is aware of Mary Hutchinson's served document and it is 25mailed to the court with the docket number on it.

The city also received two summons and complaint and demand to pay, dated and served Oct 9, 2006 along with a copy served by certified mail on Oct 21, 2006: Exhibit 1-7.) The defendants are

involving the entire city council in this "Mail fraud" and" Wire Fraud."

October 21, 2006 Summons/complaint and demand to pay served by certified mail to the City of Auburn Attorney Dan Heid, Mayor Pete Lewis, City Clerk, Sue Singer city council, Roger Thordarson, city council Bill Peloza, city council, Gene Cerino, city council, Rich Wagner city council, Lynn Norman city council, Nancy Backus city council, Paul Krauss Head of planning for the city of Auburn, and Chuck Joiner city of Auburn codes officer. Filed with the court along with the complaint and summons and exhibits on December 29, 2006. Exhibit 5-7.

October 24, 2006 certified mail receipts signed by C. Blevens for Pete Lewis, and Dan Heid. The following Auburn Officials signed for themselves or their spouse signed: Roger Thordarson, Sue Singer, Frances Cerino, Kay Wagner and Lynn Norman and filed with the court along with the complaint and summons and exhibits on December 29, 2006...Exhibit 7.; 11 26page 2, line5-11; 15(exhibit from Dec 29, cause of action and complaint Pg 1 exhibit #1.

December 27, 2006 served Dan Heid 20 day summons by certified mail. December 29, 2006 filed with the court the 20 day summons and the complaint and cause of action and demand to pay. RCW 4.96.020(4) and RCW4.16.170. Exhibit 8-9.

Plaintiffs' Attorney Egregiously Incompetent:

1. Failed to file the defendant's default of the summons/complaint and demand to pay.

2. Filed an amendment making changes on client's cause of action complaint without permission, voiding both served summons and complaints of his clients (the Erickson's,) Therefore voiding the Erickson's serving within the statutes of limitations. Did not bother to add first served summons and complaint to his amendment. Mrs Erickson told counsel she was not happy he took the Mayor and Paul Krauss and Charles Joiner off the complaint. Justin told Mrs Erickson they are the city. We are suing the city. Exhibit 14. #6 line 12.

3. Failed to make the Federal court aware the Plaintiffs filed to the exact date the defendants claim is the tolling of the statute of limitation (October 8, 2003). October 8, 2006 was a Sunday, served October 9, 2006, filed with the Washington Court on December 29, 2006 along 27with affidavits and certified proof of serving the summons. Exhibit 1-3

4. April 2010, the plaintiffs find their egregious attorney voided the serving of Mary Hutchinson with his unscrupulous sham amendment and one hundred percent personally responsible for plaintiffs claims to be denied.

5. Prior to plaintiff's counsel amendment, The Defendant's filed for Notice of Removal of the plaintiff's case January 26, 2007 (denied)

6. On April 4, 2007, amended plaintiff's Pro Se, complaint and cause of action, without plaintiff's approval or knowledge of the amendment being detrimental to our case. Exhibit 14.
    a. Amendment changed my case and more important changed the statute of limitations entirely. Then presented a convenient unsubstantial opportunity for the defendant's to ask for removal of our case, while counsel knows the defendants have defaulted three times..
    b. Counsel did not argue on behalf of the petitioner's to keep our case in the Washington court.
    c. May 3, 2007 Defendant's conveniently luck out second request for Notice of Removal. To Federal court is Granted.
7. Refused to submit evidence handed him by plaintiff's that "would" support our case. Exhibits 1-15, 20, 35-72.
8. Refused to subpoena witnesses for the plaintiff's that requested themselves to be subpoenaed by him to testify and "would" have proven our case.
9. Filed declarations that were to our detriment. Exhibit 45 & 61.
    a. Stating the plaintiff's had received a building permit. When Justin Park had proof in hand that he handed to the Erickson's September

2008, of internal city hall time clock documents proving the permit never was approved or denied, it vanished inside city hall. Exhibit 55-56; Paul Krauss Declaration18A pg 5-18.

b. He had evidence that they had not received this building permit ever.
    i. He had evidence of time clocks showing the plaintiff's submitted the building permit application.
    ii. He had evidence the city deemed the building permit application we submitted a complete submittal.
    iii. He had no evidence that the building permit had been approved or denied.

10. The city has never given notice of the building permit approval. ["NO" notice of any kind about the building permit.

11. Takes Alan Poe's declaration, leaving out dates when the second SEPA for the same, already approved, pad site was illegally requested.
    a. SEPA issues began in January 2004, This date error was definitely to our detriment.

SEE EXHIBIT 23-26; August 28, 2003, Plaintiff's explain to the mayor we need a permanent building to get a decent loan. The mayor tells the planners I am having financial problems. Exhibit 62-63. The only financial problems the plaintiffs had was the

city denied us a permanent permit, which denied us a reasonable bank loan.

Petitioner's filed as Pro Se, in a court with jurisdiction that observes the Discovery Rule and the Policy Making Rule that governed our case. RCW 4.96.020(4) and RCW4.16.170. Under the Tort RCW's. Exhibit 11.

The petitioners now understand the Federal Courts are partial to the tolling of the statutes and do not swear oath to the Constitution. Both the acts the defendants and our counsel corrupted the machinery of both the Washington State court and the Federal Court.

Because the Federal Court is beyond the borders of the jurisdiction of our case. And because incompetent counsel failed to argue on behalf of the Petitioners cannot be cause for the Federal Court to accept the case. Because of trials commenced in Washington State Superior Courts cannot be moved to Federal Court By Plaintiffs incompetent counsel being absent of argument. If the parties do not raise the question of lack of jurisdiction,

THE FEDERAL COURT DID NOT HAVE JURISDICTION OF THE PLAINTIFFS CASE.

Therefore the petitioner invokes the court to give the petitioner due process by remanding their case to the lower court in the State of Washington.

"If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter sua ponte." Atlas

Life Insurance Co. v. W.I. Southern Inc., 306 U.S. 563, 59S. Ct. 657, 83 L. Ed. 987 (1939); Continental Mining and Milling Co. v. Migliaccio, 16 F.R.D. 217 (D.C. Utah 1954). Therefore, lack of jurisdiction cannot be waived and jurisdiction cannot be conferred upon a federal court by consent, inaction or stipulation. California v. LaRue, 409 U.S. 109 S. Ct. 390, 34 L. Ed. 2d 342 (1972); Natta v. Hogan, 392 F.2d 686 (10TH Cir.1968); Reconstruction Finance Corp. v. Riverview State Bank, 217 F.2d 455 (10th Cir. 1955)." [Basso v. Utah Power & Light Co.495 F 2d 906, 910 (10 th Cir. 1974)]

"The lack of subject matter jurisdiction may properly be raised for the first time at the appellate stage." Rodriguez v. State, 441 So.2d 1129, 1135 (Fla. 3d DCA 1983).

"But when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See Bradley v. Fisher, 80 U.S. (13 Wall.) at 351 ("when the want of jurisdiction is known to the judge, no excuse is permissible"); Turner v. Raynes, 611 F.2d 92, 95 (5th Cir. 1980) Stump is consistent with the view that "a clearly inordinate exercise of unconfirmed jurisdiction by a judge-one so crass as to establish that he embarked on it either knowingly or recklessly-subjects him to personal liability")." [Rankin v. Howard, 633 F.2d 844 ()1980)] "When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action

should be dismissed for want of jurisdiction." [Melo v. US, 505 F2d 1026 (8th Cir, 1974)]

"No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party. Scott v. McNeal, 154 U.S. 34,46, 38 S. S. ed. 896, 901, 14 Sup. Ct Rep. 1108. No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment of decree in a court of one state is questioned in a court of another government, Federal or state, it is open, under proper averments, to inquire whether the court rendering the decree or 32judgment had Jurisdiction to render it." [Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907)]

"Where there is no jurisdiction over the subject matter, there is as well, no discretion to ignore that lack of jurisdiction. See F.R. Civ.P. 12(h)(3), supra note 1." [Joyce v. U.S., 474 F. 2D 215 (3rd Cir. 1973)]

"Rule 12(h) (3) of the Federal Rules of Civil Procedure provides that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. Bradbury v. Dennis, 310 F.2d 73 (10th Cir.

1962), cert. denied, 372 U.S. 928, 83 S. Ct. 874, 9 L. Ed. 2d 733 (1963).

The party invoking the jurisdiction of the court has the duty to establish that federal jurisdiction does exist, Wilshire Oil Co. of Texas v. Riffe, 409 F.2d 1277(10th Cir. 1969),

Thus, the party invoking the federal court's jurisdiction bears the burden of proof. Becker v. Angle, 165 F.2d 140 (10th Cir. 1947).

[World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)]

The Federal Court is aware of the Federal jurisdiction being outside the boundaries of the State of Washington Court and the Federal Court is aware the State of Washington is a sovereign state with its own boundaries and the Federal Court never had the jurisdiction to accept moving the Petitioners case outside the boundaries of the State of Washington and into their jurisdiction.

Therefore the judgments are voided. Defendants defaulted on both their answer to the summons and complaint and demand to pay, and Rule 1446(a-b)&1447.. Exhibits 1-9 &11pg2,2.4-2.6 Exhibit 13. Under RCW Tort Laws.11

Fact

There is [no proof] by the city that they answered the either of summons, complaint and demand to pay. I trusted Superior Court of Washington, for King County to have them filed and on record under Docket No. 06-2-40691-5 KNT, I sent I put on them, in certified mail along with the serving of the December 29, 2006 documents.

I did my best and tried to file Mary's served documents in the Appeals court, not realizing my attorney had sabotaged our case. Exhibit 10: See appendix for copies of issuance of subpeonies.

This is a crime deemed so severe and fundamentally opposed to the operation of justice that it is not subject to any statute of limitation.

There is no time limit on an independent action claiming fraud upon the court. "Federal Rules of Civil Procedure 60(b)-Substantive Error. FRCP 60b (4)

Petitioners' counsel withheld evidence he had in hand, and did not submit to the court, that "would" have proven the Petitioners filed to the tolling of the three year statute of policy-making fraud limitation. Exhibits 27-34a; 37-41; 43-44;46-48; 50-56; 65-68. 1-3;11 pg2 line 5-11.

Order Granting Defendant's Motion For Summary Judgment: "Despite the conclusory statement in Ms. Erickson's declaration, Plaintiffs

[PLAINTIFFS COUNSEL]have not offered any specific evidence supporting their claim that they 35were ignorant of the City's allegedly wrongful denial of a permanent permit for their modular building before June 2004."

The Mayor said "The law is the law"

Discovery requested from the defendant's by the plaintiffs' attorney received September 2008:

1. E-mails from internal city hall stating the planners had held up plaintiff's permit approvals for SEPA, FAC and Civil, for several months without notice of any kind to the plaintiff's. Exhibit 62-64..
2.
    i. Why would the planners hold the plaintiff's permits without any notice from June 03, to September 25, 2003, when they were issuing permits to Walgreens to bulldoze my salon? Knowing I needed four months to build my new building?

    ii. Not to mention the FIRST building permit vanished without notice of any kind [NEVER] to be approved.

3. E-mails from internal city hall and Osaki's Declaration that are between the planners discussing forcing the plaintiff's to "acknowledge" and to be required to sign letters "understanding" they were only receiving temporary" short term "occupancy.

4. Paul Krauss' declaration, with the sequence (time clocks), of permit process, states the city requested a second ;SEPA for the same pad site, in January of 2004. Exhibits 18A; pg 5 ¶1.48; States "Shortly after the city's final DNS was issued" There was no SEPA issue.

5. SEPA had been approved for this pad site for a permanent building OF ANY KIND up to 8,000 sq ft. committing policy fraud. Statute 25.26(4)My witnesses testimony and evidence of all my letters to the city about aesthetics and visual and the letters to me from the city about aesthetics and visual prove it, that my counsel did not submit. Exhibits 46-48 50-54. Alan is discussing permanent modular's being the issue, not SEPA.

Jim Tinner Declaration in City's Motion for Summary Judgment dated October 3, 2008.

1. Before he walked out of the city of Auburn and agreed to testify for the Plaintiff's in September 2009. Exhibit 70, 2nd ¶2,line 8.

2. September 8, 2003 e-mails state the Erickson's application for SEPA had been approved and notice withheld from the Erickson's..

3. My witness testimony "would" have proven the mayor to be committing perjury. Paul Krauss and the mayor told both my husband and I "modular's are unacceptable in Auburn and illegal." Exhibit 65-68 &(22 pg7 line 23, pg8 line7-10.)

4. All letters between the city and the plaintiff's discuss city policies, that were policy fraud[LAW FRAUD]against modular's. Exhibit 28-34; 41; 46-48. 50-54

5. There is no SEPA issues before January 2004. All letter point to policy fraud issues. The city claimed modular's are illegal in Auburn "unacceptable" Exhibit 19. "I believe I mentioned that was a little strange as I had processed several modular permits in the past for permanent occupancy." IN THE PAST! I went to the mayor and discussed the above told to me by my civil engineer and was told the modular's I took pictures of were old and before the new laws and I had seen them for thirty years so I accepted that answer. Exhibit 70 &19.

6. Time clocks of the permit process proved the plaintiff's had" never" received approval and no notice of any kind for the approximately 23,000 sq foot concrete tilt up building permit application. It VANISHED INSIDE CITY HALL. Exhibit Paul Krauss

declaration pg 5, to pg 18. The Bld permit shows up once and never again to be approved or disapproved. Exhibit 55 ¶

7. This time clock evidence was in the defendant's brief however was overlooked. Exhibit 55 ¶2,Kruass declaration 18A pg 5-18.

8. Tampered with permit application dates from internal city of Auburn records. Evidence the plaintiff handed their counsel that "would" prove the Discovery Statute and fraud statute and the policy-making statute, he did not submit our behalf: (If a plaintiff could not find a law that protects their claim, then they have no valid claim. The plaintiffs had no knowledge of a law that would validate a claim until May 14, 2004.

DISCOVERY FRAUD, AND POLICY MAKING EVIDENCE

1. Defendant's false claims of policies and laws of Auburn allow the city to make decisions on building permits due to visual, aesthetic, architectural policy's, (Exhibits28-34a 46-47).RCW and WAC laws (governed on sight built buildings, not pre built at the factory-modular's), the plaintiff's discovered on May 14, 2004 that modular's were governed on their own modular RCW and WAC laws, (Exhibit 41) Plaintiff's had no way to know they were being

policy defrauded until they found the laws on May 14, 2004. Therefore had no known legal right to file claim against the city until the date of May 14, 2004. The mayor said "the law is the law, you would have to change the law."

2. The city makes false claims to the court that the plaintiff's requested temporary occupancy, then changed their minds and asked for permanent occupancy later to hide they denied plaintiff's long term occupancy. (See Paul Krauss letter to the Erickson's below.) exhibit 22pg 7 line23; 18A pg8, line1-4&line8 The mayor told plaintiff's the law is the law (whether you feel injured or not.) Exhibit 30.

3. Plaintiff's were denied due process with their permit process for both permanent building permits. Paul Krauss' letter dated May 20, 2003 plainly stating the plaintiff's requested long term (permanent occupancy). Then states plaintiff's were issued short term occupancy.

   See exhibits 30 Finding of facts-1. &3. (Paul Krauss' letter to the plaintiffs dated May 20, 2004, stating the Erickson's "proposal consists of the "request" to install an approximately 7,700 square foot modular building to support a personal service use within the C-1 , Light Commercial zone for "long–term" use." This letter continues to state, "The City issued a subsequent addendum to the Final DNS September 24, 2003 related to the installation of a modular building, but on a "temporary basis".

4. A news article in February of Shelley discussing trying to make the building look nicer to make the city happy and the news reporter version of the city discussing the city's policy laws regarding the modular. (Not SEPA issues.) See exhibits53, 54.

5. Acknowledgment and required letters the city discusses in their INTERNAL E-MAILS dated September 8, 2003, of making plaintiff's sign were letters plaintiff's signed on October 8, 2003, that were " required" of the plaintiff's by [law] to "acknowledge", and that the plaintiff's " understood" (NOT REQESTED), Exhibit 59.

6. Smeared typing and cut off evidence the city submitted in their case hiding the content of letters written by the plaintiff's that "would" prove content to be discussing policy issues with defendant's. Exhibits 35-37; 39-43

ATTORNEY REFUSED EVIDENCE:

[Subpoenas Per Request Of The Witnesses]: and evidence in hand from the Erickson's and the defendants.

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is

engaged in "fraud upon the court"...Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985),

The court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ...It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function---- thus where the impartial functions of the court have been directly corrupted.

"Fraud upon the Court" defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. "Kenner v. D.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2ded. p. 512, ¶ 60.23.

The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." "Fraud up the Court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934),

("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336lll. 316; 168 N.E. 259 (1929), ("The maxim that fraud vitiates every transaction into which it enters...."); In re Village of Willowbrook, 37 lll.App.2d 393 (1962)("It is axiomatic that fraud vitiates everything.") Dunham v. Dunham, 57 lll.App. 475 (1894), affirmed 162 lll. 589 (1896); Skelly Oil Co. v. Univesal Oil Products Co., 338 lll.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 lll. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

"A judge is an officer of the court, as well as is all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartial and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements.

A judge is not the court. People v. Zajic, 88 lll. App. 3d 477, 410 N.E.2d. 626 (1980).

The plaintiffs requested their counsel to withdraw October 2008.

THE FEDERAL COURT DEPRIVED PLAINTIFF DUE PROCESS BY ACCEPTING A CASE OUTSIDE BOUNDARIES OF JURISDICTION, OBSTRUCTING JUSTICE.

I filed my case Pro Se, as a tort case under Washington State law RCW 4.96.020(1-4) and RCW 4.96.010. Rule RCW4.16.170; RCW 4.96.041 For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. Exhibit1-3;11, pg2,line5-11.

National "a person owing permanent allegiance to and under the protection of a "state. 8 US CA §1101(a)(21):

October 8, 2006 landed on a Sunday. Monday Mary served these documents to the city agent on the exact day the city claims is the tolling of the three year statute of limitations.

The city claims the day of red tagging of my building on October 8, 2003, is the day the city claims I should have known the city was doing me wrong. That makes the served summons and complaint, our attorney sabotaged to the very date the city claims is the statute of limitation.

The Plaintiffs Were Denied Due Process Of Two Building Permits.

Erickson's applied for two permanent building permits, separately and independent of each other to build permanently on two different pad sites already pre-approved on their strip mall development. The plaintiff's were denied both permanent building permits. The plaintiff's received the second building permit requested only after discovering the RCW [LAWS] ON MAY 14, 2004. The plaintiff's first building permit requested vanished inside city hall to date six years later, which was not discovered until September 2008.

City Officials Claim False Fraud Laws

The city officials claimed false policy-making; RCW.43.21C.060, RCW43.21C.240. AND WAC 197-11-258. AND CITY POLICY UD-1,ACP) AND UD-9,ACP. governed the plaintiffs modular building permit. Exhibits 28-34

. Policy-making Fraud Discovery Rule; Statute § 25.26(4) &Fraud statute; RCW 4.16.0080(4). Tolling statute; RCW 4.16.107

Without a law to support the plaintiffs modular being legal the Erickson's had no claim, because it was the law. [The law is the law.] The Erickson's had to discover the true RCW43.22.455(1),RCW46.04.303. and Wac296-150m-0600(a) laws on May 14, 2004 Exhibit 41

The defendants claim the permit process was detained and the time clock restarted because of the changes in plans by the Erickson's .Exhibit 22,pg1¶3; pg 2¶1-11¶1&2;preplan meeting is not when the 102 day time clock begins. Time clock on the building permit began on Feb 3, however the date was hand changed [tampered with] internally inside city hall to March 3, 2003. Exhibit 55,¶3; exhibit 39 top left of page. City claimed the Erickson's changed the civil plans twice for coffee kiosk, and made an incomplete restarting time clocks, Paul Kraus declaration: Exhibit 18A ,page 3 ¶5 line 14 #11.&pg5,line6,#16.thrupg 6 line1-21.pg 7, line14-17; [I never met with Paul Krauss and the mayor in his office ever]. Exhibit 65&66. Exhibt 22pg 2 ¶3 [as the court and the Erickson's had been fooled this was not the construction approval for the building plan this was the construction approval for the underground construction for the CIVIL-FAC only, (Discovered from the city's internal time clocks received September 2008) NOT THE BUILDING PERMIT. BLD03-0058]

Exhibit 38, FAC03-0009. This civil work was completed for the entire strip mall by mid September 2003 in order to hook up the modular. We needed a permanent building. Our business was not interrupted at that time, it became interrupted when defendants' constantly lied to us about the law not allowing the modular. By policy-making fraud, which is only resolved by finding a law that backs your claims which we did on May 14, 2004. Which our past attorney is aware of. Red

tagging, traffic fees' signing the papers it was all due to false policy –making [laws].

REASONS FOR GRANTING THE PETITION

The dignity of the United States Government will not permit the defendants to sham the courts by allowing judgment in the Federal court that was outside the jurisdiction of the plaintiff's case, to stand and there is no other just result than to invoke the petitioners case to be remanded back to the Superior Court of Washington at Regional Justice Center For King County where the Petitioners Pro SE filed their case before hiring Justin Park their now past attorney. In reality there is no reason for the defendant's to be allowed to put a case together against the plaintiff's in any court.

"Process is void in the rendering State and is not entitled to full faith and credit elsewhere." Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)]. And by the Tort laws of Washington, the defendant's failure to answer the summons, complaint and demand to pay served October 9, 2006 is grounds for default.

"Since the courts of the United States are courts of limited jurisdiction, there is a presumption against its existence." City of Lawton Okla. V. Chapman, 257 F...2d 601 (10th Cur, 1958). "A judgment rendered in violation of due process.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Counsel of Record

Pro Se

July 20, 2010

UNITED STATES DISTRIC COURT
WESTERN DISTRICT OF WASHINGTOBN
AT SEATTLE

Case No. C07-683MJP

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

John E. Erickson and Shelley A. Erickson Pro Se,

Petitioners,

V.

The City of Auburn,

Respondent

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(filed October 24, 2008)
Marsha J. Pechman, U.S. District Judge

This matter comes before the Court on Defendant's motion for summary judgment. (Dkt. No. 25.) After reviewing the motion, Plaintiffs' response (Dkt. No 28), Defendant's reply (Dkt. No. 36), all papers submitted in support thereof, and the balance of the record, the Court GRANTS the motion and DISMISSES this action. The Court's reasoning is set forth below.

Background

In 2001, Plaintiffs (hereinafter, the "Erickson's) learned that the commercial property housing their salon had been sold and the new owner was unlikely to renew their lease. (Am. Cmplt at ¶) They then bought a parcel of land and began work on designs for a new building for the salon. (Id. At ¶l &12. Below is a summary of the relevant facts concerning development process.

1. On September 24, 2002, the Erickson contacted the City of Auburn (the "City") and made a pre-application request to begin the development process. (Dkt. No. 35 at 19-21.) The pre-application meeting was held on October 16, 2002. (Dkt. No. 35 at 23-27.)

2. On November 12, 2002, the Ericksons submitted their SEPA Environmental Check list . ("SEPA application"). (Dkt. No. 35 at 28-38.) The City informed the Ericksons that the SEPA application could not be processed, in part because the Ericksons had not included a project permit application. (Dkt. No. 35 at 43 &46.)

3.(was missing on order) WENT TO 4.

4. After submitting the SEPA application in November 2002 and before submitting the facilities permit application in February 2003, the Erickson added a drive –through espresso stand to their proposed development project. On April 9, 2003, the City informed the Erickson's that addition of the espresso stand would delay the application. Dkt No 35 at 47-48.) After the Erickson's informed the City that they would remove the proposed espresso stand to prevent delay, the City proceeded with the review. (Dkt. No. 35 at 49-52).

5. On June 3, 2003, the City issued it its Final Determination of Non-Significance for the Erickson's proposal. ((Dkt. No. 35 at 55). Ten days later, the City notified the Erickson's that their construction plans had been approved and that they were required to schedule a conference with the City before beginning construction. (Dkt. No. 30 at 3.)

6. On August 28, 2003, the Erickson's landlord notified them that they had to vacate their rented location by September 30, 2003. (Am. Cmplt at ¶ 21.) Knowing that they could not complete construction of their new building before that date, the Erickson's submitted a second building permit application to the City on September 25, 2003 requesting permission to locate a modular building on the new property. (Am. Cmplt at ¶ 23; Dkt. No. 35 at 61.) The Erickson sought permanent occupancy of the modular building from the beginning. (Dkt. No. 29 at 2.)

7. On October 8, 2008, the City red-tagged " the Erickson's work site halting all construction

until they paid a $17,200.00 traffic fee. (Am.Cmplt at piano¶¶29; Dkt. No. 26 at 12.) Ms. Erickson paid the fee and alleges that the City also required her to sign a letter agreeing to consider the modular building a temporary structure that would "be permitted for occupancy for a maximum period of twelve (12)month.[.]" (Dkt. No. 35 at 65.) The letter is dated September 24, 2003. (AM. Cmplt at double piano symbols¶24 & 31; Dkt. No. 26 at 12.) The traffic fee was later adjusted when the City determined it was incorrectly calculated. (Dkt . No. 35 at 67.)

8. On October 8, 2003, the City issued a temporary permit for the modular building. (Dkt. No. 35 at 66.)

9. On November 12, 2003, after the modular building was installed, the City conducted its final inspection of the modular building . (See Dkt. No. 35 at 70.)

10. In January 2004, the Erickson's met with the City to discuss the possibility of either extending or making permanent the temporary permit for the modular building. (Dkt. No. 35 at 68-71)The City informed the Erickson that they would need a new building permit. (Dkt. No. 35 at 70-71.)

11. On March 12, 2004, the Erickson filed their second SEPA application. (Dkt. No. 35 at 72-81.) The City conducted its review of the application and issued a Final Mitigate Determination of Non-Significance ("MDNS") ON May 20, 2004. (Dkt. No. 35 at 84-86.) This MDNS

included a list of mitigation measures to be implemented by the Erickson. (Dkt. NO. 35 at 86.)

12. After the Erickson's made additional modifications required by the City (see Dkt. No. 35 at 87-89), the City issued a Certificate of Occupancy for the modular building granting it permanent status on July 26, 2004. (Dkt. No. 35 at 90.)

PROCEDURAL HISTORY

Proceeding pro se, the Erickson filed their original complaint against multiple Defendants in King County Superior "Court on December 29, 2006. Defendants removed the matter to this Court on January 26, 2007. (See Case No. C07-126 MJP AT Dkt. No. 1.) On March 9, 2007, the Court remanded the case after finding that it lacked subject matter jurisdiction. (Id. At Dkt. No. 6.) The Erickson obtained counsel and then filed an amended complaint in state court on April 4, 2007, naming the City of Auburn as the only defendant. (Dkt. No. 1-2.) On May 3, 2007, the City again removed the case to this Court. (Dkt. No. 1.) The City filed its amended answer on May 10, 2007 and asserted as an affirmative defense that some or all of the claims were barred by the applicable statute of limitation. (Dkt. No. 5 at 15.)

The amended complaint contains both federal and state claims against the city. The Erickson's allege that the City's actions during the development process: (1) constitute a violation of the Erickson's procedural due process and equal protection rights; (2) effected a taking of the

Erickson' property; (3) interfered with a contractual expectancy; and (4)support claims for negligence and misrepresentation. (Dkt. Nos. 1-2.) The City's motion for summary judgment contends the each of these claims is barred by the applicable statute of limitations.

ANALYSIS

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material, fact and that the moving party is entitled to judgment as a matter of law. Fed R. Civ P. 56©. Material facts are facts "that might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, the "evidence of the non-movant is to be believe, and all justifiable inferences are t be drawn in his favor" Anderson, 477 U.S. at 255.

The City prevails on its motion for summary judgment because each of the Erickson' waited over three years to ring any claims against the City, filing their original complaint on December 29, 2006. Because the longest statute of limitations period applicable to any of the claims is three years, the claims must be dismissed as untimely.

1. The Federal and State Standards

The Erickson's bring three federal claims pursuant to 42 U.S.C. § 1983. The Statute of limitation for federal civil rights claims is three

year. RK Ventures, Inc. v. City of Seattle, 307 F. 3d 1045, 1058 (9th Cir. 2002). To determine the date these causes of action accrued, the Court must look to federal law. Canatella v. Van De Kamp, 486 F.3d 1128, 1133 (9th Cir. 2007).

"Under federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action." Two Rivers v. Lewis, 174 F. 3d 987, 991-92(9tgh Cri. 1999).

The Erickson urge the Court to apply the discovery rule to these claims, which defines the accrual date the date "when [injury] is discovered or should have been discovered."(Resp. at 5, citing Barry Aviation Inc. v. Land O'Lakes Municipal Air port Com'n,377 F. ed 682, 688 (7th Cir. 2004).) Plaintiffs insist that this rule requires discovery of the injury and who has caused the injury before the claim accrues. (Resp. at 5.) This is not the standard adopted by the Ninth Circuit. Nonetheless, as discussed below, even if the Court were to apply the discovery rule to the federal claims, the date the claims accrued would fall more than three years before the Erickson brought this action.

The Erickson's remaining state law claims sound I tort and are subject to a three year state of limitations. RCW 4.16.080. Under Washington law, a tort claim accrues at the time the act or omission causing injury occurs. In re: Estates of Hibbard, 118 Wn.2d 737, 744 (Wash. 1992). The acts complained of in the Erickson' complaint had occurred by October 8, 2003. However, Plaintiffs again urge the Court to use the discovery rule to

determine the claim accrual date. When the nature of a tort prevents an injured party from knowing about the injury at the time of the act or omission, Washington law applies the "discovery rule., "which state that the cause of action accrues " at the time the plaintiff knew or should have known all of the essential elements of the cause of action. "Id.; see also Green v. A.P.C., 136 Wn.2d 98, 95(Wash. 1998).

As discussed below, Plaintiffs' claims would also be time-barred under the discovery rule. Because a person who suffers injury necessarily know or should know the elements of his claim, the state of limitations begins to run as soon as an injury is discovered, even if the plaintiff does not "understand all the legal consequences of the claim." Green, 136 Wn2d at 95-97. Further, it is not necessary that all the damages resulting from the act be sustained at time of discovery; even a slight injury that precedes greater harm is sufficient to notify the plaintiff of his claim. Id. At 96. Finally, "[t]he discovery rule requires a plaintiff to use due diligence in discovering the basis for the cause of action". Allen v. State, 118 Wn.2d 753, 758(Wash.1992)(internal citation omitted). As discussed below, the Erickson had discovered or should have discovered their alleged injuries by October 8, 2003.

2. Date of Accrual.

To support their claims, the Erickson's allege that the City: (1) failed to "process []their application for building permits in a timely manner" leaving them with insufficient time to

complete construction of their new building before they were evicted from their leased premises: (2) improperly informed the Erickson that the modular building could not be given permanent status due to a City ordinance.

(Am. Cmplt at ¶¶22-26, 29-31.) The Erickson's were required to bring their claims within three years of the date they knew of the injuries caused by these acts.

3. Delay in Processing Permits

The city concluded the review of the first building permit application (for construction of a new building) by June 2003 and informed the Erickson that they could begin construction after they attended a pre-construction meeting with the City. The City granted the Erickson' second building permit application (for the modular building on October 8, 2003.' Any claim related to the timely processing of either of these permit applications accrued no later than the date the permit was issued.

If the plaintiffs' suggest, the Court were to apply the discovery rule, any claims related to the alleged delay would accrue no later the September 30, 2003. The Erickson's identify only on injury resulting from the City's alleged delay in processing their building permit. In the complaint, they state that "[i]f the City had processed their application for building permits in a timely manner, the Erickson would have had sufficient time to complete construction of their building." (Am. Cmplt at ¶22; See also S. Erickson Decl. at 5 ("Even though the

Foot note: 1 The Amended Complaint incorrectly alleges that '[t]he City did not issue the permit for the modular building until July 26, 2004." (AM. Cmplt at piano ¶28.) In fact, it is undisputed that a temporary permit for the modular building was issued on October 8, 2003

. (Dkt. No. 3[illegible] at 66.) On July 26, 2004, the City issued a Certificate of Occupancy granting a permanent permit for the modular building. (Dkt. No. 35 at 90.)

City knew that we were under a time crunch, they took forever to process our application. Before any permit was issued, in August 2003

We got an eviction notice from our landlord. Under the discovery rule, the Court would look to the date the Erickson's discovered (or should have discovered) the injury caused by the City's alleged delay- at the latest, that date is September 30, 2003, the date the Erickson were required to vacate their rented space. Because the Erickson's did not bring their complaint within three years of that injury, any claims related to the City's alleged delay in processing building permits are barred by the statute of limitations.

4. The Traffic Fee and "Red –Tagging

Plaintiffs also claim that the City improperly charged them a traffic fee and "red –tagged" their construction site, halting all work on the site. (Am. Cmplt at piano¶29-31.) The City's alleged wrongful act occurred on October 8, 2003, and the record shows that the Erickson had knowledge of the act and resulting injury on that date. The Erickson's paid the fee on October 8, 2003 even though they

believed that it should not have been charged. (Am. Cmplt at ¶30 ("Mrs. Erickson had previously been told by City officials that the traffic fee would only be required when they complete the commercial building on the property"). The record establishes that the Ericson knew of the alleged wrongful act and resulting injury no later than October 8, 2003and their current claims related to that act expired on October 8, 2006, more than two months before the Erickson filed their complaint.

5. Denying the Modular Building Permanent Status

Although the Erickson's sought permanent occupancy status for their modular building, the City granted them a temporary permit for the modular on October 8, 2003. (Dkt. No. 35 at 66.) The Erickson alledge that the modular building qualified for permanent status under a City ordinance. Any injury resulting from the City's error occurred on October 8, 2003 when the temporary permit was granted and permanent status was denied.

The Erickson now assert that they did not receive notice of City's error in denying them permanent status for the modular building until June 2004. (S. Erickson Decl. ¶) This statement , presented for the first time in the brief opposing this motion and the attached declaration, blatantly contradicts the record before the Court. (See Resp. at 6 ("Prior to [June 287, 2004], the Erickson's had no reason to even suspect that Auburn had erred or taken any actions other than those which may have been appropriate.").)

After the Mayor of Auburn informed Ms. Erickson in August 2003 that permanent modular's were not permitted in Auburn, she "confirmed with Alan Poe, the civil engineer for the project [] that Auburn in fact had no laws or ordinances forbidding permanent occupancy of [modular building]. " (Dkt. No. 37 at 8.) After meeting with the Mayor, Ms. Ericson "started taking pictures of all the modular's in Auburn" to bring to the planning meeting with the City. (Dkt. No. 37 at 14.) During the September 12, 2003 pre-construction meeting for the modular, Ms. Erickson informed the City "that there are modular's buildings all over Auburn." (Dkt. No. 37 at 8.) Ms. Erickson also alleges that the City forced her to sign a letter acknowledges the temporary nature of the modular October 8, 2003. (Dkt. No. 26 at 12 ("[they] made me pay the traffic fee and made sign [the letter] before I could leave ".) Apparently, Ms. Erickson did not wish to sign the letter because she believed the modular building should be granted permanent status. The Erickson's do not dispute any of these facts. Nonetheless, Ms. Erickson states in most recent declaration ," [w]e did not have any knowledge that the City had done anything illegal at the time; we were just following the process as best we could." (Dkt. No. 29 at 2.)

Ms. Erickson would now have us believe that she had no knowledge of the City's alleged wrongdoing until the city allegedly admitted its own error in a June 2004letter. Ms. Erickson's conclusory statement is contradicted by the undisputed evidence in the record showing that Ms. Erickson believed in the fall of 2003 that the >City

was wrong to deny her permanent status for the modular building. In her declaration, Ms. Erickson says the June 2004 letter informed the Erickson's that "[the City] knew that we could have the modular on a permanent basis, as I had been asking for. This was the first time anyone from the City told me that any error had been made." (Dkt. No. 29 at 2,) While the City may not have previously informed Ms. Erickson of its alleged error, the record show that she was on notice from other sources in September 2003 that permanent modular's were allowed in the City of Auburn. The Court cannot adopt a rule stating that a plaintiff's statute of limitation accrues only once the defendant admits its own wrongful conduct, even when the plaintiff suspected and insisted that the defendant was engaged in wrongful conduct long before the admission.

With such a rule in place, may potential claims would never accrue because potential defendants are unlikely to admit a wrongful act. On a motion for summary judgment, the Court is required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the motion. However, "facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts." Scott v. Harris, 127 S. lCt. 1769, 1776 (2007) (finding no genuine issue of material fact when plaintiff's assertion that he did not endanger others during a car chase was contradicted by videotape of the chase.).

When a party's story is "blatantly contradicted by the record, so that no reasonable

jury could believe it" a court should not adopt that story for purposed purposes of ruling on a summary judgment motion. Id.

The nonmoving party bears the burden of coming forward with "specific facts showing a genuine issue for trial. " Fed. R. Civ., P. 56(e).

Despite the conclusory statement in Ms. Erickson's declaration, Plaintiffs have not offered any specific evidence supporting their claim that they were ignorant of the City's allegedly wrongful denial of a permanent permit for their modular building before June 2004. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial ." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Based on the record, the Court finds that the Ericksons knew of the City's allegedly wrongful conduct on October 8, 2003 when the temporary permit for the modular building was granted and permanent status denied. Any claims related to that conduct or resulting injury accrued on that date. The Erickson's failed to bring their current claims within the applicable statutes of limitations and they 'must be dismissed as untimely.

CONCLUSION

Because each of the Erickson's claims is barred by the applicable statutes of limitation, the claims are dismissed and the City's motion for summary judgment is GRANTED.

This action is hereby dismissed with prejudice.
The Clerk is directed to send a copy of this order to all counsel of record.

Dated : October 24, 2008.
Marsha J. Pechman U.S. District Judge

UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT
No. 08-35962

ORDER

John E. Erickson and Shelley A. Erickson Pro Se,
Petitioners,

V.

The City of Auburn,
Respondent

Filed February 2, 2009
Appeal from the United States District Court for
the Western District of Washington
ORDER DC # 2: 07-cv-00683-MJP

Judges ALEX KOZINSKI and MICHAEL DALY HAWKINS:

Appellants' motion, filed December 11, 2008, and motions for issuance of subpoenas are denied. Appellee's objection to extraneous papers, attached as exhibits to appellantants' motions, that were not part of the district court's record is noted. Those extraneous papers attached to appellant's motions are deemed stricken. Appellee's motion to strike

extraneous papers form the opening brief is referred to the panel that considers the merits of this appeal. No motions for reconsideration, modification, or clarification of this order shall be filed or entertained. Briefing has been completed. This appeal is ready for calendaring. (SC)

UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT
No. 08-35962

MEMORANDUM

John E. Erickson and Shelley A. Erickson Pro Se,
Petitioners,
V.

The City of Auburn,
Respondent

Filed January 05, 2010
Appeal from the United States District Court for
the Western District of Washington
DC # 2: 07-cv-00683-MJP

Appeal from the United States District Court
For the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted December 15, 2009**

Before: ALFRED T. GOODWIN, J. CLIFFIORD WALLACE and RICHARD R CLIFTON, circuit judges.

John Erickson and Shelley A. Erickson appeal pro se from the district court's summary judgment in their 42 U.S.C.§1983 action alleging various claims_____

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Against the City of Auburn in connection with their attempts to develop a parcel of real property. We have jurisdiction under 28 U.S.C. §1291. We review de novo, Hermandez v. Spacelabs Med. Inc., 343 F. 3d 1107, 1112 (9th Cir. 203). And we affirm.

The district court properly granted summary judgment in favor of the City because the claims against the City are time-barred. See Wash. Rev. Code §4.16.080(2) (2006) ("The applicable statute of limitations for actions brought pursuant to 42 U.S.C. §1983 is the forum states's statute of limitations for personal injury actions. "); Mont. Pole & Treating Plant v. I.F. Laucks and Co., 993 F. 2d 676, 678 (9th Cir. 1993) ("[T]the critical determination of when an action accrues is knowledge of the facts essential to the cause of action.") .

Appellants' remaining contentions are unpersuasive.

The City's February 9, 2009 Motion to Strike is granted.

AFFIRMED.

UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

No. 08-35962

ORDER

John E. Erickson and Shelley A. Erickson Pro Se,
Petitioners,

V.

The City of Auburn,
Respondent

Filed March 24, 2010
Appeal from the United States District Court for
the Western District of Washington
ORDER DC # 2: 07-cv-00683-MJP
Washington (Seattle)

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

The petition for panel rehearing is denied.

No further filing will be accepted in this closed case. [73839225] (GV)

UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

No. 08-35962

MANDATE

John E. Erickson and Shelley A. Erickson Pro Se,
Petitioners,

V.

The City of Auburn,
Respondent

Filed April 01, 2010
Appeal from the United States District Court for the Western District of Washington
ORDER DC # 2: 07-cv-00683-MJP
Washington (Seattle)

The judgement of this court , entered January 05, 2010 takes effect this date. This constitutes the formal mandate of this Court issued pursuant to

Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Gabriela Van Allen
Deputy Clerk